

Senate Bill 368

By: Senators Jackson of the 24th, Murphy of the 27th, Williams of the 19th, Rogers of the 21st, Goggans of the 7th and others

AS PASSED

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the "Fair Business Practices Act of 1975," so as to provide for certain unlawful activity relating to the listing of certain telephone numbers in local telephone directories; to provide for definitions; to clarify certain provisions regarding confidentiality of certain information; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the "Fair Business Practices Act of 1975," is amended by revising paragraph (4) of subsection (b) and subsection (d) of Code Section 10-1-393, relating to unfair or deceptive practices in consumer transactions being unlawful, as follows:

"(4)(A) Using deceptive representations or designations of geographic origin in connection with goods or services. Without limiting the generality of the foregoing, it is specifically declared to be unlawful:

(i) For any nonlocal business to cause to be listed in any local telephone directory a local telephone number for the business if calls to the local telephone number are routinely forwarded or otherwise transferred to the nonlocal business location that is outside the calling area covered by such local telephone directory or to a toll-free number which does not have a local address and the listing fails to state clearly the principal place of business of the nonlocal business;

(ii) For any person operating a business to cause to be listed in any local telephone directory a toll-free number for the business if the listing fails to state clearly the principal place of business of such business; or

(iii) For any person to use an assumed or fictitious name in the conduct of such person's business, if the use of such name could reasonably be construed to be a misrepresentation of the geographic origin or location of such person's business.

~~(i) For any nonlocal business to publish in any local telephone classified advertising directory any advertisement containing a local telephone number for the business unless the advertisement clearly states the nonlocal location of the business; or~~

~~(ii) For any nonlocal business to cause to be listed in any nonclassified advertising local telephone directory a local telephone number for the business if calls to the number are routinely forwarded or otherwise transferred to the nonlocal business location that is outside the calling area covered by such local telephone directory and the listing fails to state clearly the principal place of business of the nonlocal business~~

(B) For purposes of this paragraph, the term:

(i) 'Local' or 'local area' ~~refers to~~ means the area in which any particular telephone directory is distributed or otherwise provided free of charge to some or all ~~telephone service~~ telecommunications services subscribers.

(ii) 'Local telephone ~~classified advertising directory~~' ~~refers to any telephone classified advertising directory~~ means any telecommunications services directory, directory assistance data base, or other directory listing which is distributed or otherwise provided free of charge to some or all ~~telephone~~ telecommunications services subscribers in any area of ~~the~~ this state and includes such directories distributed by ~~telephone service~~ telecommunications companies as well as such directories distributed by other parties.

(iii) 'Local telephone number' ~~refers to any telephone~~ means any telecommunications services number which is not clearly identifiable as a long-distance ~~telephone telecommunications services~~ number and which has a three-number prefix typically used by the local ~~telephone service~~ telecommunications company for ~~telephones telecommunications services devices~~ physically located within the local area.

~~(iv) 'Nonclassified advertising local telephone directory' refers to any telephone directory which is distributed free of charge to some or all telephone subscribers in any area of the state and which does not contain classified advertising and includes such directories distributed by telephone service companies as well as such directories distributed by other parties.~~

~~(v) 'Nonlocal business' refers to~~ means any business which does not have within the local area a physical place of business providing the goods or services which are the subject of the advertisement or listing in question.

(v) 'Telecommunications company' shall have the same meaning as provided in Code Section 46-5-162.

(vi) 'Telecommunications services' shall have the same meaning as provided in Code Section 46-5-162.

(vii) 'Telecommunications services subscriber' means a person or entity to whom telecommunications services, either residential or commercial, are provided;'

"(d)(1) Notwithstanding any other provision of the law to the contrary, the names, addresses, telephone numbers, social security numbers, or any other information which could reasonably serve to identify any person making a complaint about unfair or deceptive acts or practices shall be confidential. However, the complaining party may consent to public release of his or her identity by giving such consent expressly, affirmatively, and directly to the administrator or administrator's employees.

(2) Nothing contained in this subsection shall be construed:

(A) ~~to prevent the subject of the complaint, or any other person to whom disclosure to the~~ To prevent the administrator from disclosing the complainant's identity may if the administrator believes that disclosure will aid in resolution of the complaint, from being informed of the identity of the complainant;

(B) ~~to~~ To prohibit any valid discovery under the relevant discovery rules; or

(C) ~~to~~ To prohibit the lawful subpoena of such information."

SECTION 2.

Said part is further amended by revising Code Section 10-1-397, relating to the authority of the administrator to issue cease and desist orders or impose civil penalties, judicial relief, and receivers, as follows:

"10-1-397.

(a) As used in this Code section, the term:

(1) 'Call' means any communication, message, signal, or transmission.

(2) 'Telecommunications company' shall have the same meaning as provided in Code Section 46-5-162.

(3) 'Telecommunications services' shall have the same meaning as provided in Code Section 46-5-162.

(b) Whenever it may appear to the administrator that any person is using, has used, or is about to use any method, act, or practice declared by ~~Code Section 10-1-393, 10-1-393.1, 10-1-393.2, 10-1-393.3, 10-1-393.4, 10-1-393.5, or 10-1-393.6~~ this part or by regulations made under Code Section 10-1-394 to be unlawful and that proceedings would be in the public interest, whether or not any person has actually been misled, ~~he or she~~ the administrator may:

(1) Subject to notice and opportunity for hearing in accordance with Code Section 10-1-398, unless the right to notice is waived by the person against whom the sanction is imposed, take any or all of the following actions:

(A) Issue a cease and desist order prohibiting any unfair or deceptive act or practice against any person; or

(B) Issue an order against a person who willfully violates this part, imposing a civil penalty of up to a maximum of \$2,000.00 per violation; or

(2) Without regard as to whether the administrator has issued any orders under this Code section, upon a showing by the administrator in any superior court of competent jurisdiction that a person has violated or is about to violate this part, a rule promulgated under this part, or an order of the administrator, the court may enter or grant any or all of the following relief:

(A) A temporary restraining order or temporary or permanent injunction;

(B) A civil penalty of up to a maximum of \$5,000.00 per violation of this part;

(C) A declaratory judgment;

(D) Restitution to any person or persons adversely affected by a defendant's actions in violation of this part;

(E) The appointment of a receiver, auditor, or conservator for the defendant or the defendant's assets; or

(F) Other relief as the court deems just and equitable.

~~(b)~~(c) Unless the administrator determines that a person subject to this part designs quickly to depart from this state or to remove his or her property therefrom or to conceal himself or herself or his or her property therein or that there is immediate danger of harm to citizens of this state or of another state, ~~he~~ the administrator shall, unless he or she seeks a temporary restraining order to redress or prevent an injury resulting from a violation of paragraph (20) of subsection (b) of Code Section 10-1-393, before initiating any proceedings as provided in this Code section, give notice in writing that such proceedings are contemplated and allow such person a reasonable opportunity to appear before the administrator and execute an assurance of voluntary compliance as provided in this part. The determination of the administrator under this subsection shall be final and not subject to judicial review.

~~(c)~~(d) With the exception of consent judgments entered before any testimony is taken, a final judgment under this Code section ~~is~~ shall be admissible as prima-facie evidence of such specific findings of fact as may be made by the court which enters the judgment in subsequent proceedings by or against the same person or his or her successors or assigns.

~~(d)~~(e) When a receiver is appointed by the court pursuant to this part, he or she shall have the power to sue for, collect, receive, and take into his or her possession all the goods and

chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this part, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court. In the case of a partnership or business entity, the receiver may, in the discretion of the court, be authorized to dissolve the business and distribute the assets under the direction of the court. The court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(f)(1) Whenever the administrator issues a cease and desist order to any person regarding the use of a telephone number which when called automatically imposes a per-call charge or other costs to the consumer, other than a regular charge imposed for long distance service, including, but not limited to, a telephone number in which the local prefix is 976 or in which the long distance prefix is 900, the administrator may certify to the appropriate local or long distance ~~carrier~~ telecommunications company responsible for billing consumers for the charges that billing for the charges or for certain of the charges should be suspended. The ~~carrier~~ telecommunications company shall then suspend such billing with reasonable promptness to preserve the assets of consumers in accordance with the certification, without incurring any liability to any person for doing so. For the purposes of this Code section, 'reasonable promptness to preserve the assets of consumers' shall mean to act as quickly as the ~~carrier~~ telecommunications company would act to preserve its own assets, provided that the ~~carrier~~ telecommunications company cannot be required to make any changes to its existing systems, technologies, or methods used for billing, other than any minimal procedural changes necessary to actually suspend the billing. The ~~carrier~~ telecommunications company shall not be made a party to any proceedings under this part for complying with this requirement but shall have a right to be heard as a third party in any such proceedings.

(2) The suspension of billing under this subsection shall remain in effect until the administrator certifies to the ~~carrier~~ telecommunications company that the matter has been resolved. The administrator shall certify to the ~~carrier~~ telecommunications company with reasonable promptness when the matter has been resolved. In this certification, the administrator shall advise the ~~carrier~~ telecommunications company to collect none of, all of, or any designated part of the billings in accordance with the documents or orders which resolved the matter. The ~~carrier~~ telecommunications company shall collect or not collect the billings in the manner so designated and shall not incur any liability to any person for doing so.

170 (3) Nothing contained in this subsection shall limit or restrict the right of the ~~carrier~~
171 telecommunications company to place its own restrictions, guidelines, or criteria, by
172 whatever name denominated, upon the use of such ~~telephone service~~ telecommunications
173 services, provided such restrictions, guidelines, or criteria do not conflict with the
174 provisions of this subsection."

175 **SECTION 3.**

176 This Act shall become effective on January 1, 2011.

177 **SECTION 4.**

178 All laws and parts of laws in conflict with this Act are repealed.